

# FRONT LINE

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## AG's Office offers training

### Joint conference planned for law enforcement

In cooperation with the Police Chiefs Association, Sheriffs Association and several other organizations, the AG's Office will present the training materials at a joint Law Enforcement Conference in May.

The AG's Office will provide training May 23 and 24 at the Lake of the Ozarks conference. It also will present local and national experts who will address a variety of topics pertinent to Missouri law enforcement officers. Among the topics planned:

- FBI investigations of serial murders
- Traffic stops and drug interdiction
- Rural crime
- Recent gun legislation
- Gang violence
- Sexual harassment claims against police officers

The seminar is being developed for chief law enforcement officers, detectives and road officers.

### Providing assistance a priority for AG

#### A Message

From Attorney General **Jay Nixon**

Upon taking office as attorney general, I made it a priority of this office to increase assistance to law enforcement officers. While assistance always has been provided, it became evident more could be done — and needed to be done — if police officers are to address the serious crime problems we face.

Among the changes I have implemented is an increased emphasis in providing training to agencies and groups. Our office is planning to present training at the joint Law Enforcement Conference in May.

Assistant Attorneys General Ted Bruce and Tim Anderson teach regularly at the State Highway Patrol Academy. I would like to offer similar training services to local law enforcement officers.

#### TRAINING TOPICS

Topics that attorneys can address include:

- Sunshine Law issues and closed records
- Search and seizure issues
- Case law updates of new court decisions
- New state statutes
- Criminal law updates
- Miranda warnings
- Testifying in court
- Rules of evidence

Because attorneys have full and active caseloads, scheduling sometimes may be a problem. Nevertheless, I would encourage you to contact criminal attorney Ted Bruce for training or legal assistance at 314-751-3321.

I am firmly committed to increasing police training and offering whatever assistance my office can provide toward enhancing that training.

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### Courts approve HGN field sobriety test

Although most officers have been using the Horizontal Gaze Nystagmus test as a field sobriety test for detecting drunken drivers for years, Missouri courts just recently approved the admission of HGN test results.

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## SUMMARY: CRIMINAL LEGISLATION

While 1993 was a successful year for law enforcement legislation, additional legislation has been introduced this session to address issues that continue to concern peace officers. Among the bills:

■ **HB 1041 (Philip Smith, D-Louisiana):**

Creates the crime of "carjacking," a class B felony.

■ **HB 997 (Sue Shear, D-Clayton):** Makes it a crime to possess a firearm in a school zone.

■ **HB 945 (Russell Gann, D-Northwoods):** Makes it unlawful to discharge a firearm at or from a motor vehicle.

■ **HB 1086 (Mary Bland, D-KC):** Creates the crime of criminal street gang harassment to deter harassment of students by gang members.

■ **SB 542, HB 1223 (Harry Wiggins, D-KC, Carol Roper, D-Sugar Creek):** Amend the crime of assault of a law enforcement officer in the second degree to include cases where the officer is struck or injured by an intoxicated driver.

■ **HB 1250 (Kaye Steinmetz, D-Florissant) — Comprehensive Domestic Violence Bill:** Changes laws relating to several aspects of domestic violence.

■ **HB 1264 (Steven Carroll, D-Hannibal) — Omnibus Crime Bill:** Includes provisions to allow cities to pass gun ordinances that are more restrictive than state law and to make transferring a concealable weapon to a juvenile a felony. It also includes several sections on mandatory sentencing and juvenile offenders.

### QUESTIONS

If you have questions about legislation, please contact Intergovernmental Relations Director Larry Weber at 314-751-3321. **Front Line Report** will keep you updated on legislation. Also, expressing support of legislation to your local legislator is the most effective action you can take.

## UPDATE: CASE LAWS

**State v. Timothy A. Bunts, No. S.D. 18365**

(Mo.App., S.D. Dec. 16, 1993)

While the court noted the Supreme Court has eliminated the pretextual arrest doctrine, it also discussed whether a traffic stop was pretextual.

The court found that a trooper validly stopped a vehicle when its driver, on seeing the trooper, suddenly stopped or slowed, nearly causing an accident.

The court also found probable cause for a search when the defendant became very nervous while the trooper waited for a license check. Finally, a lapse of 12 minutes during the traffic stop before the defendant's permission to search was requested did not consti-

tute an unnecessarily long detention.

The court also noted it is not necessary there be probable cause to believe a vehicle contains contraband before an officer is authorized to request permission to search. An officer may at any time ask a citizen if he has contraband in his car and may ask for permission to search.

The defendant gave the trooper consent to search the vehicle's trunk. While searching, the trooper noticed a faint odor of what he recognized as raw marijuana. The officer then had probable cause to believe contraband was concealed. Once the trooper detected the odor of what he could identify, based on experience, as marijuana, he was authorized to

proceed, without additional consent, to search the vehicle.

**State v. Robert L. Wade, No. W.D. 47160**

(Mo.App., W.D. Dec. 7, 1993)

The trial court did not err in admitting the defendant's statement as violating his rights to self incrimination. When the deputy asked the defendant if he wanted to talk to him, the defendant initially responded in the affirmative, but then replied, "Well, I think I don't want to say anymore. I think I should have an attorney."

The deputy said that was fine and

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that was the defendant's decision to make, however, if he didn't want to talk to the deputy he was going to recommend referring the case to the ATF and an agent would contact him. The defendant then stated he would talk to the deputy and confessed.

The court found that this was not "interrogation" because the deputy did not expressly question the defendant after he allegedly invoked the right to counsel. It could not be concluded the defendant was subject to "functional equivalent" of questioning. The defendant at that point was not responding to interrogation in violation of his right to counsel, but had initiated further conversation with the police and waived his right to counsel.

The court also found that the defendant initiated conversation after he invoked his right to counsel by stating he would talk to the deputy. The court also noted the defendant was familiar with the criminal justice system: He had been given Miranda rights in six to eight previous crime investigations.

**State v. Larry Harris,  
No. W.D. 45630**

(Mo.App., W.D. Jan. 11, 1994)

There was sufficient evidence of an appellant's conviction of failure to return rented personal property under Section 578.150. The defendant's intent or purpose to deprive a rental agency from a car was inferred from the "failure to return, as agreed, a substantial arrearage on rental payments and damage to the vehicle," as well as his payment with a charge card classified by the issuing bank as "wild" for at least three months prior

to the rental, and a statement to an individual that the car belonged to a friend.

Also, Section 578.150.2 does not require a demand be made to prove the crime of failure to return leased or rented personal property. The subsection only pronounces what must be established for the state to shift the burden of going forward with the evidence to the accused.

**State v. Noel Giffin,  
No. S.D. 18150**

(Mo.App., S.D. Dec. 20, 1993)

The trial court erred in admitting evidence of other sexual-abuse victims in a prosecution of the defendant for rape. In this bench trial, the court specifically stated it relied on the other victims' testimony.

**State v. James Bally,  
No. W.D. 47136**

(Mo.App., W.D. Jan. 18, 1994)

This case is a good reminder to police officers about charging a defendant with DWI and assault charges. The defendant pleaded guilty to DWI the day after his victim died. Because DWI is a lesser-included offense of DWI manslaughter, the DWI conviction could bar the state from prosecuting the manslaughter because of double jeopardy. However, the prosecutor was granted leave to nolle prosequi (dismiss) the DWI charge after the defendant pleaded guilty, but before sentencing. The state then could proceed with the DWI manslaughter charges.

While things worked out here, officers must be cautious about filing DWI charges in injury cases. Immediately contact your prosecutor in these situations.

**HGN SOBRIETY TEST****CONTINUED** from Page 2

In the case of *State v. Richard Hill*, the Western District Court of Appeals held that HGN testing generally was accepted in the scientific and highway safety communities as an accurate indicator of intoxication.

The case arose in Sedalia during the State Fair in 1992. The defendant, who had two prior DWI convictions and no license at the time of his arrest, refused to take a breath test. The arresting officer did, however, administer field sobriety tests, including HGN. The HGN test involves an officer observing involuntary "jerking" in the eyes, which increases with intoxication.

In previous HGN cases, the courts had refused to recognize HGN as reliable because the prosecutor presented no expert testimony on HGN's reliability.

The Pettis County prosecutor, working with the Attorney General's Office, brought in a nationally recognized expert on HGN testing, Dr. Marcelline Burns of Los Angeles. She explained to the jury and the court how HGN testing was developed and how it can be highly reliable when used by a properly trained police officer.

As a result of the Hill decision, officers now can testify about HGN test results in criminal cases. They cannot, however, testify about an individual's blood-alcohol level (BAC).

To testify about HGN results, officers should state they have the recommended eight hours of training in HGN and field sobriety testing.

# Victims' Rights Law making a difference

Marion Dinwiddie appeared before Camden County Circuit Court Judge James Franklin on Jan. 28 to be sentenced following his guilty plea for involuntary manslaughter (DWI) and DWI assault.

Dinwiddie was driving in the wrong lane of an interstate highway with a blood-alcohol level of 0.25 when he hit a truck carrying a family returning home from church, killing an 8-year-old girl and seriously injuring her mother and baby sister.

The AG's Office was appointed as prosecutor, and received a plea to the three felonies with an

understanding the state would recommend the maximum seven years' imprisonment on each count to be served consecutively.

Under Missouri's Victims' Rights Law, victims have a right to testify before sentencing about how a crime has affected them. The 8-year-old girl's parents presented compelling testimony about how the crime has impacted their lives, which resulted in Judge Franklin sentencing Dinwiddie to the maximum sentence on each count, to be served consecutively.

We applaud Judge Franklin for his willingness to respond to this

serious crime with an appropriate sentence. To our knowledge, this is the stiffest sentence to be imposed in Missouri in a DWI manslaughter case.

Just as important is the impact of the Victims' Rights Law. Besides giving victims a chance to express their thoughts, it presents relevant and pertinent evidence to a court before sentencing.

There is no doubt the victims' statements were the determinative factors in this case. The AG's Office believes the Victims' Rights Law will continue to be a positive influence in the state's criminal justice system.

**JEREMIAH W. (JAY) NIXON**

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